

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2005-13-WS - ORDER NO. 2006-745
DECEMBER 7, 2006

IN RE: Application of Wyboo Plantation Utilities,)
 Inc. for Approval of a New Schedule of)
 Rates and Charges for Water and Sewer)
 Services.)

ORDER DENYING
EVIDENTIARY MOTION
OF WYBOO

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Motion of Wyboo Plantation Utilities, Inc. (Wyboo, WPU, or the Company) seeking approval to present the prefiled testimony of Joe Maready at the hearing in this docket without the presence of Mr. Maready. Mr. Maready was the accounting witness for WPU in the upcoming hearing in this rate proceeding. Mr. Maready, however, is now deceased.

WPU requests that the Commission allow Mr. Maready's testimony into the record of this proceeding, notwithstanding the fact that Mr. Maready cannot appear to present the testimony. Accordingly, Wyboo requests a waiver of 26 S.C. Code Ann. Regs. 103-869(A) (1976). This regulation reads as follows: "In General. Witnesses shall be examined orally. Witnesses presenting testimony shall be sworn, or shall affirm, before their testimony shall be deemed evidence in the proceeding or any questions are put to them." Wyboo points to 26 S.C. Code Ann. Regs. 103-803 (1976), which provides that "[i]n any case where compliance with any of these rules and regulations produces

unusual hardship or difficulty, the application of such rule or regulation may be waived by the Commission upon a finding by the Commission that such waiver is in the public interest.” According to Wyboo, the instant situation has presented it with insurmountable “hardship or difficulty,” in the event that a waiver is not granted by this Commission, since “Wyboo’s compliance with Rule 103-869 would not only be difficult; it would be impossible.” Motion of Wyboo at 3. Further, WPU asserts that it would not be possible, practical, or feasible for Wyboo to procure the services of another accounting witness at this point. The order in this rate matter is due to be issued by this Commission by February 22, 2007 as per S.C. Code Ann. Section 58-5-240 (Supp. 2005). WPU states that it could not seek a continuance in this case for the purpose of obtaining another accounting witness and familiarizing that person with the matters addressed in the prefiled testimony in time to complete this proceeding by the time that the Order is due for publication. Wyboo also cites the expense connected with obtaining another witness.

Among other arguments, Wyboo asserts that granting the waiver sought serves the public interest. Without accounting testimony, Wyboo states, Wyboo cannot provide and the Commission cannot review the accounting rationale supporting Wyboo’s application for rate relief. WPU further notes that it would not object to other parties filing testimony in further response to Maready’s prefiled testimony, nor would it object to other parties making oral arguments at the hearing with regard to this testimony.

Counsel for both the Wyboo Plantation Owners Association, Inc. (Owners) and The Villas of Wyboo Owners Association (Villas), the intervenors in this matter, have filed returns in opposition to Wyboo’s Motion. Among other arguments, both the Owners

and the Villas assert that Maready's testimony is inadmissible hearsay. Specifically, the Owners state that the testimony is written evidence of a statement made out of court to show the truth of the matter asserted therein. Accordingly, the intervenors argue that the testimony is classic hearsay. Further, the intervenors state that the testimony does not fit into any of the exceptions to the hearsay rule found in the South Carolina Rules of Evidence (SCRE). The Villas point out that this Commission has adopted SCRE pursuant to 26 S.C. Code Ann. Regs. 103-870 (1976). In addition, these parties protest the fact that they would not be able to cross-examine this witness, when a substantial rate increase is being sought by the Company, and further state their belief that this would be prejudicial and a due process violation.

WPU filed a Reply to the intervenors' documents. Wyboo disagrees with the assertions of the intervenors and states that the Commission has the authority to allow Mr. Maready's testimony into the record of this case and that doing so will not harm or prejudice the procedural rights of any party in this Docket. WPU goes on to point out that 26 S.C. Code Ann. Regs. 103-870(A) (1976) actually provides in part that any part of the evidence may be received in written form. WPU also asserts, among other things, that the due process rights of the parties are not violated where a party is not given the opportunity to confront witnesses, so long as there has been a meaningful opportunity to be heard.

While this Commission is sympathetic to the plight of Wyboo, and deeply regrets the death of Mr. Maready, we agree with the intervenors' assertions. First, we agree that the testimony is inadmissible hearsay. There are no applicable exceptions contained in

the South Carolina Rules of Evidence. Further, we are troubled by the intervenors' inability to cross-examine Mr. Maready, who was to be a major witness in this rate proceeding. In addition, we do not believe that the provisions of 26 S.C. Code Ann. Regs. 103-870(A) (1976) allowing evidence to be presented in written form obviates the rule that hearsay is not admissible. We hold that the rule allowing any part of the evidence in written form does not necessarily apply to the prefiled testimony of a witness in a major rate proceeding, particularly here, where the witness is no longer available to sponsor or clarify the testimony if such was needed by the Commission. As such, we do not believe that it applies in this case. Also, particularly in light of the fact that this case is a major rate proceeding, wherein a substantial rate increase is being requested by the Company, we do not believe that a meaningful opportunity to be heard overcomes the intervenors' right to confront the accounting witness for the Company. The accounting portion of this case is a major part of it. Accordingly, we decline to waive 26 S.C. Code Ann. Section 103-869(A) (1976) by applying 26 S.C. Code Ann. Regs. 103-803 (1976), and we therefore deny Wyboo's Motion to present the testimony of Mr. Joe Maready at the WPU rate proceeding without the presence of Mr. Maready.

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



G. O'Neal Hamilton, Chairman

ATTEST:



C. Robert Moseley, Vice Chairman

(SEAL)